

The only issue before the Board on this appeal is whether claimant sustained any work-related accidental injuries while working for respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record compiled to date and the parties' arguments, the Board finds and concludes:

The preliminary hearing Order should be affirmed. The Board affirms the Judge's conclusion that claimant failed to prove that she has sustained a work-related accidental injury as a result of the work that she performed for respondent.

Respondent operates a grocery store that it purchased from another company. Before that purchase, claimant worked as a pharmacy clerk in the supermarket, where she commenced employment in December 2000. But in June 2002, respondent assigned claimant different job duties and claimant commenced work as a cashier and checker.

Claimant has a medical history of seizure disorder, chronic fatigue, sleep disorder and chronic myalgia in the upper extremities. Claimant's medical history also includes a right rotator cuff tear, bilateral patellofemoral stress syndrome, bone spurs on her heels, right lateral epicondylitis and carpal tunnel syndrome. Consequently, before claimant sustained the alleged injuries that are the subject of this claim, claimant had undergone, among others, bilateral shoulder surgeries, bilateral carpal tunnel release, two foot surgeries, a right knee surgery and an elbow surgery.

Claimant now contends that she developed symptoms in both hands and in her back within a few weeks of June 21, 2002, when she was transferred to the cashier position. Claimant attributes her symptoms to repetitively lifting, bending, stooping and stretching as a checker. According to claimant, her symptoms progressively worsened as she continued to work.

At this juncture, the record contains the medical opinions of four doctors who have seen or otherwise evaluated claimant. Three of the doctors could not relate claimant's symptoms to her work.

The first doctor, Dr. John F. McMaster, saw claimant several times from September through December 2002. Based on Dr. McMaster's December 13, 2002 office note, the doctor was unable to establish a specific injury or a causal relationship between claimant's symptoms and her work. At respondent's insurance carrier's request, in February 2003 claimant saw Dr. George L. Lucas. Dr. Lucas found no evidence that claimant had injured herself while working for respondent but, instead, concluded that claimant's symptoms could be explained by her preexisting problems. In his February 26, 2003 letter to claimant's medical case manager, the doctor wrote, in part:

This patient [claimant] has some residuals of her shoulder arthropathy which has been operated two times in the past as well as minor sensory changes in her right hand, presumably related to her carpal tunnel surgery. She has multiple other symptoms, without very much in the way of physical findings and I think probably the best all inclusive diagnosis is that of fibromyalgia.

There is no evidence of any injury having occurred, however, in the course of her employment and the symptoms she presents I think can all be explained on the basis of preexisting difficulties in her hands, in her elbow and in her shoulder. The patient, when informed of this, became somewhat tearful and concerned as she is her only source of support, etc., but objectively there are no findings to indicated *[sic]* a work related injury and I suggested she continue on her regular working status.

Respondent's insurance carrier also requested Dr. Philip R. Mills to evaluate claimant. Dr. Mills saw claimant in May 2003 and diagnosed fibromyalgia with chronic pain syndrome. The doctor was unable to relate claimant's symptoms to her work. In Dr. Mills' May 19, 2003 letter to claimant's medical manager, the doctor stated, in part:

*Causation:* Based upon the available information, I am not able to state within a reasonable degree of medical probability, the cause of her problem. It has been of [a] long term nature and these are generally multifactorial. She does not give any history of injury and it is difficult to explain all of her diffuse areas of problem.

On the other hand, Dr. John D. Salmon, who is claimant's personal physician, concluded in a May 13, 2003 letter to claimant's attorney that he was treating claimant for right lateral elbow pain, which the doctor related to the repetitive work activities in claimant's job with respondent. Dr. Salmon wrote, in part:

. . . Donna [claimant] has a past history of right elbow inflammation, for which she received a surgery approximately three years ago, when she lived in Oklahoma. This provided a substantial improvement in her symptoms eventually. She presented to my office on May 6<sup>th</sup>, sent to me directly from her workplace due to intense pain in the right lateral elbow consistent with this previous condition. It had been exacerbated by repetitive use of the hand, wrist, and arm, required by her job duties as a checkout cashier. . . .

While this condition had existed in the past, the requirements of her current job did create the current exacerbation of this condition. She will have to return with restrictions regarding the repetitive use of this arm to prevent a recurrence, which is highly likely if she immediately resumes her previous level of use. I will be happy to provide these restrictions to her workplace if they will accept them from me. It should also be understood that she has worn both a supportive brace for the elbow and the wrist over the past nine to ten months in order to allow this condition to

tolerate the level of work she has been exposing it to, and she will likely require some degree of precautions like this, if she is not reassigned to a workstation with less repetitive activity. . . .

Considering the medical opinions that were presented for preliminary hearing purposes, the Board adopts Judge Clark's conclusion that claimant has failed to prove that she sustained personal injury by accident. As Dr. Salmon's medical records indicate, claimant has experienced chronic myalgia in the upper extremities, back and legs for years before she ever began working for respondent or its predecessor.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>1</sup>

**WHEREFORE**, the Board affirms the June 24, 2003 Order entered by Judge Clark.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2003.

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BOARD MEMBER

c: Timothy A. Emerson, Attorney for Claimant  
John F. Carpinelli, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>1</sup> K.S.A. 44-534a(a)(2).